

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

INES JARILLO,
Plaintiff,

v.

JOSE LUIS CAMPUZANO,
INDIVIDUALLY AND D/B/A
TEX-MEX AUTO & TRUCK SALVAGE,
Defendant.

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C.A. No. 4:24-cv-02479

JUDGE CHARLES ESKRIDGE

**DEFENDANT’S MOTION TO VACATE SCHEDULING AND
DOCKET CONTROL ORDER**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Jose Luis Campuzano, Individually and d/b/a Tex-Mex Auto & Truck Salvage (“Campuzano”) hereby files this, his Motion to Vacate Scheduling and Docket Control Order, and in support thereof would respectfully show the Court as follows:

I. **BACKGROUND**

1. On July 1, 2024, Campuzano filed his Notice of Removal pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure after Plaintiff improperly served Campuzano. Dkt. 1, Notice of Removal.
2. On July 29, 2024, the Court issued a Scheduling and Docket Control Order (Dkt. 6) with a discovery deadline of January 17, 2025, and docket call set for March 18, 2025.
3. On October 4, 2024, Defendant filed a Rule 12(b)(5) Motion to Dismiss for Insufficient Service of Process (“Motion to Dismiss”) (Dkt. 14) that is now pending before the Court.
4. So as to not waive his rights to service, before Campuzano can comply with the scheduling order and engage in litigation, a ruling by the Court is needed on

Defendant's Motion to Dismiss (Dkt. 14). As of the date of filing this Motion, Plaintiff has not perfected service.

5. Campuzano now files this Motion to Vacate Scheduling and Docket Control Order until a ruling has been made on its Motion to Dismiss (Dkt. 14).

II. ARGUMENT AND AUTHORITIES

6. The Court has discretion to stay discovery and vacate the scheduling order in this matter pending a decision on Defendant's Motion to Dismiss. The 5th Circuit has consistently held that trial courts have broad discretion to control the course of litigation, including the authority to stay discovery and vacate scheduling orders when necessary. This discretion is exercised to manage the court's docket and in the interests of justice. *In re Ramu Corp.*, 903 F.2d 312 (5th Cir. 1990), *Corwin v. Marney, Orton Inv.*, 843 F.2d 194 (5th Cir. 1988), *Petrus v. Bowen*, 833 F.2d 581 (5th Cir. 1987).
7. In, *In re Ramu Corp.*, the court emphasized that the stay of a pending matter is within a trial court's wide discretion, which includes controlling the scope and pace of discovery. *In re Ramu Corp.*, 903 F.2d at 318. Similarly, in *Corwin v. Marney, Orton Inv.*, the court noted that a trial court may properly exercise its discretion to stay discovery pending a decision on a dispositive motion, highlighting that it would be wasteful to allow discovery on all issues if the case might be dismissed. *Corwin*, 843 F.2d at 200 (citing *Scroggins v. Air Cargo Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976)). Additionally, in *Petrus v. Bowen*, the court affirmed that a trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined. *Petrus*, 833 F.2d at 583. Therefore, it is well within the court's

discretion to vacate the scheduling order and stay discovery while Defendant's Motion to Dismiss is pending.

WHEREFORE, PREMISES CONSIDERED, Defendant Jose Luis Campuzano, Individually and d/b/a Tex-Mex Auto & Truck Salvage prays this Motion to Vacate Scheduling and Docket Control Order be granted and that Defendant have such other and further relief, both general and special, at law and in equity, to which he may prove himself justly entitled.

Respectfully submitted,

BROWN SIMS

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been served upon all parties of record *via* CM/ECF filing on December 23, 2024.



Christiane J. Chambers